

Congress of the United States
Washington, DC 20515

May 2, 2007

By Hand Delivery

Members of the Advisory Board on Radiation and Worker Health
In care of: Paul L. Ziemer, Ph.D., Chairman
Lewis V. Wade, Ph.D., Executive Secretary
Advisory Board on Radiation and Worker Health
10600 Westminster Boulevard
Westminster, Colorado 80020

Re: Rocky Flats United Steelworkers of America, Local 8031 Special Exposure Cohort Petition

Dear Dr. Ziemer, Dr. Wade and Members of the Advisory Board:

As members of the Colorado Congressional delegation, we write to you again in support of the Special Exposure Cohort Petition of the former Rocky Flats workers. The men and women who served at the Rocky Flats nuclear weapons plant throughout the Cold War are national heroes. Many in the Rocky Flats workforce knowingly and unknowingly risked their lives to help protect our country. They deserve to be honored and cared for by the nation they served.

The intent of Congress when passing the Energy Employees Occupational Illness Compensation Program Act (Act) was to ensure that the men and women who put themselves in harms way by working at Rocky Flats and other nuclear production sites had a clear and just process of applying for appropriate financial and medical compensation provided under the law and authorized by Congress. By law, Cold War veterans who become ill from exposure to radiation, beryllium and silica while working at DOE facilities were to be provided timely, uniform and adequate compensation.

As you know, the administration of the EEOICPA program has not been without controversy. Tragically, administrative waste and programmatic difficulties have delayed payment of program benefits authorized by Congress. Numerous reports have accused the Department of Energy and the Department of Labor of mismanaging the Energy Employees Occupational Illness Compensation Program, delaying and wrongfully denying benefits due to Rocky Flats and other nuclear energy workers. Agency documents suggest the Department of Labor delayed and denied such benefits as a result of conscious administrative policies.

In a few instances, NIOSH, too, has contributed to some delays and denials by insisting that it can reconstruct workers' radiation doses in the absence of adequate data, spurring public skepticism. While NIOSH has worked with the Board's contractor to develop alternative methodologies, the resulting changes in methodology have led to long delays

in the determination of claims. In these instances, NIOSH's defense of its methodologies in the face of legitimate and documented criticism has frustrated the Congressional intent to provide timely benefits and has raised questions regarding the fairness of the EEOICPA program.

The Advisory Board, too, has been dragged into this sorry history, through no fault of your own, with the disclosure of communications between the Office of Management and Budget and the Department of Labor. These communications suggest a deliberate effort by some to reduce compensation to nuclear energy workers by stacking the Board with opponents of compensation who would vote against Special Exposure Cohort petitions.

The history of Rocky Flats offers its own examples of misconduct and mismanagement, from inadequate monitoring of workers, efforts to disguise the absence of data or the intentional destruction of monitoring data, disastrous fires, and even a raid by the Federal Bureau of Investigation to seize and protect records. Many Rocky Flats workers who helped clean up the extremely toxic contamination from fires at the plant have been denied benefits for illnesses, even as a federal judge has determined that neighboring landowners are entitled to compensation for financial losses due to contamination of their properties from these same fires.

As a result of this long history, many Rocky Flats workers and their families wonder if their government has abandoned them. These workers, the people of Colorado and their elected officials are justifiably upset by the conduct of the responsible agencies.

We remind you of this unfortunate history because you do not write on a blank slate. Instead, the Board's actions over the coming days will be viewed by the people of Colorado and the nation with these sad facts in mind.

On February 15, 2005, the United Steelworkers of America, Local 8031, filed a petition to have its members who worked at Rocky Flats included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act. Much has changed since the petition was filed. The clean up at Rocky Flats has been completed, all of the workers have been laid off, and the Steelworkers Local 8031 no longer counts a single former Rocky Flats worker among its current membership. As a result, Local 8031 is a representative of the petitioners in name only. The Steelworkers provide no financial, technical or legal support to the petitioners.

It is also worth noting that NIOSH elected to expand the class of workers subject to the petition far beyond the class of workers who were formerly represented by the Steelworkers. By NIOSH's action, the class of workers subject to this petition now includes "all employees of DOE, DOE contractors, or subcontractors who have worked at the Rocky Flats Plant from April, 1952, through February, 2005."

Approval of the pending petition and membership in the Cohort would not guarantee benefits to this broad class of workers, but it would make it easier to obtain benefits for workers with the kinds of cancer known to be caused by radiation. NIOSH has opposed

this petition, as it has opposed other petitions, claiming to have adequate data and methodologies to calculate the exposures of Rocky Flats workers. However, the Advisory Board's contractor, Sanford Cohen & Associates, has documented areas of inadequate data and unreliable methodologies.

Two years after the filing of this petition, and more than six years after adoption of the Act, NIOSH's methods and dose reconstructions for Rocky Flats workers remain subject to substantial doubt. The Advisory Board is now tasked with making a recommendation as to whether or not it is feasible to estimate with sufficient accuracy the radiation dose that members of the Rocky Flats SEC petitioning class received. NIOSH, Sanford Cohen and Associates and the Advisory Board's Rocky Flat's Work Group have debated this issue for nearly 18 months. Congress did not intend to create an endless program that would reevaluate constantly evolving sets of data with ever changing methodologies. To the contrary, the Act expressly states that "The purpose of the compensation program is to provide for timely, uniform, and adequate compensation...." 42 U.S.C. 7384d(b) (emphasis added).

We are long past the point of timeliness in compensating the Rocky Flats workers. Many of these Cold War veterans have already died, and many of their surviving families continue to struggle economically due to lost income and unpaid medical bills. Many more are ill and continue to suffer, medically and economically. Granting Special Exposure Cohort status to these workers will not resolve all of the injustices that have been inflicted upon them, but it will allow some of these workers and their survivors to receive benefits while it can still provide meaningful relief. Many seek only the comfort of knowing that their survivors will be taken care of.

We therefore urge the Advisory Board to act promptly on the Rocky Flats SEC petition request while keeping in mind that there are documented concerns regarding NIOSH's ability to accurately reconstruct doses for all class participants and that it is far too late to further postpone a decision with the hope that accurate doses can yet be calculated. Thank you in advance for your full, fair and prompt consideration of this petition.

Sincerely,



Ken Salazar
United States Senator



Wayne Allard
United States Senator



Diana DeGette
United States Representative



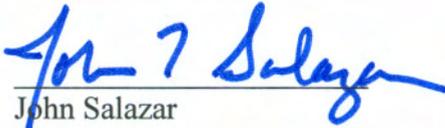
Doug Lamborn
United States Representative



Marilyn Musgrave
United States Representative



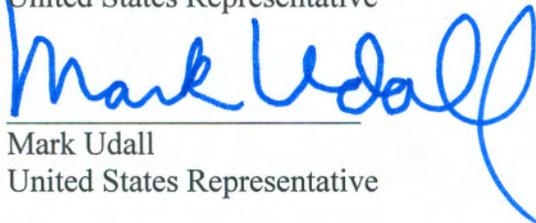
Ed Perlmutter
United States Representative



John Salazar
United States Representative



Tom Tancredo
United States Representative



Mark Udall
United States Representative